

117TH CONGRESS  
1ST SESSION

# S. 2473

To provide grants for the construction, improvement, and acquisition of middle mile infrastructure.

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## IN THE SENATE OF THE UNITED STATES

JULY 26, 2021

Ms. ROSEN (for herself and Mr. KING) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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# A BILL

To provide grants for the construction, improvement, and acquisition of middle mile infrastructure.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Middle Mile  
5       Broadband Deployment Act”.

6       **SEC. 2. ENABLING MIDDLE MILE BROADBAND INFRA-**  
7                   **STRUCTURE.**

8       (a) DEFINITIONS.—In this section:

9                   (1) ANCHOR INSTITUTION.—The term “anchor  
10          institution” means a school, library, medical or

1        healthcare provider, community college or other in-  
2        stitution of higher education, or other community  
3        support organization or entity.

4                (2) ASSISTANT SECRETARY.—The term “Assist-  
5        ant Secretary” means the Assistant Secretary of  
6        Commerce for Communications and Information.

7                (3) COMMISSION.—The term “Commission”  
8        means the Federal Communications Commission.

9                (4) ELIGIBLE ENTITY.—The term “eligible enti-  
10        ty” means—

11                        (A) a State, political subdivision of a  
12        State, Tribal government, technology company,  
13        electric utility, utility cooperative, public utility  
14        district, telecommunications company, tele-  
15        communications cooperative, nonprofit founda-  
16        tion, nonprofit corporation, nonprofit institu-  
17        tion, nonprofit association, regional planning  
18        counsel, Native entity, or economic development  
19        authority; or

20                        (B) a partnership of 2 or more entities de-  
21        scribed in subparagraph (A).

22                (5) FCC FIXED BROADBAND MAP.—The term  
23        “FCC fixed broadband map” means the map created  
24        by the Commission under section 802(c)(1)(B) of

1       the Communications Act of 1934 (47 U.S.C.  
2       642(c)(1)(B)).

3                 (6) INDIAN TRIBE.—The term “Indian Tribe”  
4       has the meaning given the term in section 4 of the  
5       Indian Self-Determination and Education Assistance  
6       Act (25 U.S.C. 5304).

7                 (7) INTERCONNECT.—The term “interconnect”  
8       means the physical linking of 2 networks for the mu-  
9       tual exchange of traffic on non-discriminatory terms  
10      and conditions.

11                 (8) INTERNET EXCHANGE FACILITY.—The term  
12       “internet exchange facility” means physical infra-  
13       structure through which internet service providers  
14       and content delivery networks exchange internet  
15       traffic between their networks.

16                 (9) MIDDLE MILE INFRASTRUCTURE.—The  
17       term “middle mile infrastructure”—

18                         (A) means any broadband infrastructure  
19       that does not connect directly to an end-user lo-  
20       cation, including an anchor institution; and

21                         (B) includes—

22                                 (i) leased dark fiber, interoffice trans-  
23       port, backhaul, internet exchange facilities,  
24       carrier-neutral submarine cable landing  
25       stations, undersea cables, transport

1 connectivity to data centers, special access  
2 transport, and other similar services; and

3 (ii) wired or private wireless  
4 broadband infrastructure, including micro-  
5 wave capacity, radio tower access, and  
6 other services or infrastructure for a pri-  
7 vate wireless broadband network, such as  
8 towers, fiber, and microwave links.

9 (10) MIDDLE MILE GRANT.—The term “middle  
10 mile grant” means a grant awarded under sub-  
11 section (c).

12 (11) NATIVE ENTITY.—The term “Native enti-  
13 ty” means—

14 (A) an Indian Tribe;  
15 (B) an Alaska Native Corporation;  
16 (C) a Native Hawaiian organization (as de-  
17 fined in section 6207 of the Elementary and  
18 Secondary Education Act of 1965 (20 U.S.C.  
19 7517));

20 (D) the Department of Hawaiian Home  
21 Lands; and

22 (E) the Office of Hawaiian Affairs.

23 (12) STATE.—The term “State” has the mean-  
24 ing given the term in section 3 of the Communica-  
25 tions Act of 1934 (47 U.S.C. 153).

1                             (13) SUBMARINE CABLE LANDING STATION.—

2       The term “submarine cable landing station” means  
3       a cable landing station, as that term is used in sec-  
4       tion 1.767(a)(5) of title 47, Code of Federal Regula-  
5       tions (or any successor regulation), that can be uti-  
6       lized to land a submarine cable by an entity that has  
7       obtained a license under the first section of the Act  
8       entitled “An Act relating to the landing and oper-  
9       ation of submarine cables in the United States”, ap-  
10      proved May 27, 1921 (47 U.S.C. 34) (commonly  
11      known as the “Cable Landing Licensing Act”).

12                             (14) TRIBAL GOVERNMENT.—The term “Tribal  
13       government” means the recognized governing body  
14       of any Indian or Alaska Native tribe, band, nation,  
15       pueblo, village, community, component band, or com-  
16       ponent reservation, individually identified (including  
17       parenthetically) in the list published most recently as  
18       of the date of enactment of this Act pursuant to sec-  
19       tion 104 of the Federally Recognized Indian Tribe  
20       List Act of 1994 (25 U.S.C. 5131).

21                             (15) TRUST LAND.—The term “trust land” has  
22       the meaning given the term in section 3765 of title  
23       38, United States Code.

24                             (16) UNDERSERVED.—The term “under-  
25       served”, with respect to an area, means an area—

- 1                             (A) that is designated as a Tribally under-  
2                             served area through the process described in  
3                             subsection (g); or  
4                             (B) that—  
5                                 (i) is of a standard size not larger  
6                             than a census block, as established by the  
7                             Commission;  
8                                 (ii) is not an unserved area; and  
9                                 (iii) as determined in accordance with  
10                             the FCC fixed broadband map, does not  
11                             have access to broadband service with—  
12                                 (I) except as provided in sub-  
13                             clause (II)—  
14                                 (aa) a download speed of not  
15                             less than 100 megabits per sec-  
16                             ond; and  
17                                 (bb) an upload speed of not  
18                             less than 20 megabits per second;  
19                             or  
20                                 (II) minimum download and  
21                             upload speeds established as bench-  
22                             marks by the Commission for pur-  
23                             poses of this Act after the date of en-  
24                             actment of this Act, if those minimum

1                   speeds are higher than the minimum  
2                   speeds required under subclause (I).

3                   (17) UNSERVED.—The term “unserved”, with  
4                   respect to an area, means an area—

5                         (A) that is designated as a Tribally under-  
6                         served area through the process described in  
7                         subsection (g); or

8                         (B) that—

9                                 (i) is of a standard size not larger  
10                                 than a census block, as established by the  
11                                 Commission; and

12                                 (ii) as determined in accordance with  
13                                 the FCC fixed broadband map, does not  
14                                 have access to broadband service—

15                                 (I) except as provided in sub-  
16                                 clause (II)—

17                                 (aa) a download speed of not  
18                                 less than 25 megabits per second;  
19                                 and

20                                 (bb) an upload speed of not  
21                                 less than 3 megabits per second;

22                                 or

23                                 (II) minimum download and  
24                                 upload speeds established as bench-  
25                                 marks by the Commission for pur-

1                         poses of this Act after the date of en-  
2                         actment of this Act, if those minimum  
3                         speeds are higher than the minimum  
4                         speeds required under subclause (I).

5                         (b) PURPOSE; SENSE OF CONGRESS.—

6                         (1) PURPOSE.—The purposes of this section  
7                         are—

8                         (A) to encourage the expansion and exten-  
9                         sion of middle mile infrastructure to reduce the  
10                         cost of connecting unserved and underserved  
11                         areas to the backbone of the internet (com-  
12                         monly referred to as the “last mile”); and

13                         (B) to promote broadband connection resil-  
14                         iency through the creation of alternative net-  
15                         work connection paths that can be designed to  
16                         prevent single points of failure on a broadband  
17                         network.

18                         (2) SENSE OF CONGRESS.—It is the sense of  
19                         Congress that—

20                         (A) in awarding middle mile grants, the  
21                         Assistant Secretary should give priority to—

22                         (i) projects that leverage existing  
23                         rights-of-way, assets, and infrastructure to  
24                         minimize financial, regulatory, and permit-  
25                         ting challenges;

- 1                         (ii) projects in which the eligible enti-  
2                         ty designs the route of the middle mile in-  
3                         frastructure to enable the connection of  
4                         unserved anchor institutions, including  
5                         Tribal anchor institutions; and  
6                         (iii) projects that—  
7                                 (I) improve the redundancy and  
8                         resiliency of existing middle mile in-  
9                         frastructure, including those projects  
10                         that facilitate interconnection with ex-  
11                         isting infrastructure, including add/  
12                         drop capabilities at existing amplifi-  
13                         cation sites and the ability to add  
14                         splice cases with adequate fiber slack  
15                         to build laterals that support future  
16                         carrier-neutral interconnection facili-  
17                         ties and connections to anchor institu-  
18                         tions; and  
19                                 (II) reduce regulatory and per-  
20                         mitting barriers to promote the con-  
21                         struction of new middle mile infra-  
22                         structure; and  
23                         (B) a regulated utility should use funds re-  
24                         ceived from a middle mile grant as a supple-

1           ment to the core utility capital investment plan  
2           of the regulated utility to—

- 3                 (i) facilitate increased broadband re-  
4                 siliency or redundancy of existing middle  
5                 mile infrastructure; or  
6                 (ii) provide connectivity to unserved  
7                 areas and underserved areas within the  
8                 service territory of the utility and nearby  
9                 communities.

10           (c) MIDDLE MILE GRANTS.—The Assistant Sec-  
11           retary shall establish a program under which the Assistant  
12           Secretary makes grants on a technology-neutral, competi-  
13           tive basis to eligible entities for the construction, improve-  
14           ment, or acquisition of middle mile infrastructure.

15           (d) APPLICATIONS FOR GRANTS.—

16                 (1) IN GENERAL.—The Assistant Secretary  
17                 shall establish an application process for middle mile  
18                 grants in accordance with this subsection.

19                 (2) EVALUATION OF APPLICATIONS.—In estab-  
20                 lishing an application process for middle mile grants  
21                 under paragraph (1), the Assistant Secretary shall  
22                 give priority to an application from an eligible entity  
23                 that satisfies 2 or more of the following conditions:

24                     (A) The eligible entity adopts fiscally sus-  
25                     tainable middle mile strategies.

- 1                         (B) The eligible entity commits to offering  
2                         non-discriminatory interconnect to terrestrial  
3                         and wireless last mile broadband providers and  
4                         any other party making a bona fide request.
- 5                         (C) The eligible entity identifies specific  
6                         terrestrial and wireless last mile broadband pro-  
7                         viders that have—
- 8                             (i) expressed written interest in inter-  
9                             connecting with middle mile infrastructure  
10                          planned to be deployed by the eligible enti-  
11                          ty; and
- 12                             (ii) demonstrated sustainable business  
13                          plans or adequate funding sources with re-  
14                          spect to the interconnect described in  
15                          clause (i).
- 16                         (D) The eligible entity has identified sup-  
17                          plemental investments or in-kind support (such  
18                          as waived franchise or permitting fees) that will  
19                          accelerate the completion of the planned  
20                          project.
- 21                         (E) The eligible entity has demonstrated  
22                          that the middle mile infrastructure will benefit  
23                          national security interests of the United States  
24                          and the Department of Defense.

1                         (3) GRANT APPLICATION COMPETENCE.—The  
2                     Assistant Secretary shall include in the application  
3                     process established under paragraph (1) a require-  
4                     ment that an eligible entity provide evidence that the  
5                     eligible entity is capable of carrying out a proposed  
6                     project in a competent manner, including by dem-  
7                     onstrating that the eligible entity has the financial,  
8                     technical, and operational capability to carry out the  
9                     proposed project and operate the resulting middle  
10                    mile broadband network.

11                         (e) ELIGIBILITY.—

12                         (1) PRIORITIZATION.—To be eligible to obtain a  
13                     middle mile grant, an eligible entity shall agree, in  
14                     the application submitted through the process estab-  
15                     lished under subsection (d), to prioritize—

16                         (A) connecting middle mile infrastructure  
17                     to last mile networks that provide or plan to  
18                     provide broadband service to households in  
19                     unserved areas;

20                         (B) connecting non-contiguous trust lands;

21                         or

22                         (C) the offering of wholesale broadband  
23                     service at reasonable rates on a carrier-neutral  
24                     basis.

1                             (2) BUILDOUT TIMELINE.—Subject to para-  
2                             graph (5), to be eligible to obtain a middle mile  
3                             grant, an eligible entity shall agree, in the applica-  
4                             tion submitted through the process established under  
5                             subsection (d), to complete buildout of the middle  
6                             mile infrastructure described in the application by  
7                             not later than 5 years after the date on which  
8                             amounts from the grant are made available to the el-  
9                             igible entity.

10                             (3) PROJECT ELIGIBILITY REQUIREMENTS.—

11                             (A) CAPABILITY TO SUPPORT RETAIL  
12                             BROADBAND SERVICE.—A project shall be eligi-  
13                             ble for a middle mile grant if, at the time of the  
14                             application, the Assistant Secretary determines  
15                             that the proposed middle mile broadband net-  
16                             work—

17                                 (i) will be capable of supporting retail  
18                             broadband service that meets speed, la-  
19                             tency, reliability, consistency in quality of  
20                             service, and related criteria, as the Assis-  
21                             tant Secretary shall determine; and

22                                 (ii) will be able to easily scale speeds  
23                             over time to—

1                             (I) meet the evolving connectivity  
2                             needs of households, businesses, and  
3                             anchor institutions; and

4                             (II) support the deployment of  
5                             5G, successor wireless technologies,  
6                             and other advanced services.

7                             (B) MAPPING DATA.—

8                             (i) USE OF MOST RECENT DATA.—In  
9                             mapping out gaps in broadband coverage,  
10                            an eligible entity that uses a middle mile  
11                            grant to build out terrestrial or fixed wire-  
12                            less middle mile infrastructure shall use  
13                            the most recent broadband mapping data  
14                            available from one of the following sources:

15                             (I) The FCC fixed broadband  
16                             map.

17                             (II) The State in which the area  
18                             that will be served by the middle mile  
19                             infrastructure is located, or the Tribal  
20                             government with jurisdiction over the  
21                             area that will be served by the middle  
22                             mile infrastructure (if applicable).

23                             (III) Speed and usage surveys of  
24                             existing broadband service that—

(aa) demonstrate that more than 25 percent of the respondents display a broadband service speed that is slower than the speeds required for an area to qualify as unserved; and

(bb) are conducted by—

(AA) the eligible entity;

(BB) the State in

which the area that will be served by the middle mile infrastructure is located; or

(CC) the Tribal government with jurisdiction over area that will be served the middle mile infrastructure (if applicable).

(ii) SHARING FACILITY LOCATIONS.—

(I) DEFINITION.—In this clause,

the term “covered recipient”, with respect to an eligible entity, means—

(aa) the Assistant Secretary;

(bb) the Commission;

(cc) the Tribal government

with jurisdiction over the area

1                   that will be served by the middle  
2                   mile infrastructure (if applica-  
3                   ble); and

4                   (dd) the State broadband of-  
5                   fice for the State in which the  
6                   area that will be served by the  
7                   middle mile infrastructure is lo-  
8                   cated.

9                   (II) PROVISION OF INFORMA-  
10                  TION.—Subject to subclauses (III)  
11                  and (IV), an eligible entity that con-  
12                  structs, improves, or acquires middle  
13                  mile infrastructure using a middle  
14                  mile grant shall share with each cov-  
15                  ered recipient the location of all the  
16                  middle mile broadband infrastructure.

17                  (III) FORMAT.—An eligible enti-  
18                  ty shall provide the information re-  
19                  quired under subclause (II) to each  
20                  covered recipient in a uniform format  
21                  determined by the Assistant Sec-  
22                  retary.

23                  (IV) PROTECTION OF INFORMA-  
24                  TION.—

1                                     (aa) IN GENERAL.—The in-  
 2                                     formation provided by an eligible  
 3                                     entity under subclause (II) may  
 4                                     only be used for purposes of car-  
 5                                     rying out the grant program  
 6                                     under subsection (c) and any re-  
 7                                     porting related thereto.

8                                     (bb) LEGAL DEFENSES.—

9                                     (AA) IN GENERAL.—A  
 10                                     covered recipient may not  
 11                                     receive information under  
 12                                     subclause (II) unless the  
 13                                     covered recipient agrees in  
 14                                     writing to assert all available  
 15                                     legal defenses to the disclo-  
 16                                     sure of the information if a  
 17                                     person or entity seeks disclo-  
 18                                     sure from the covered recipi-  
 19                                     ent under any Federal,  
 20                                     State, or local public disclo-  
 21                                     sure law.

22                                     (BB) RULE OF CON-  
 23                                     STRUCTION.—Nothing in  
 24                                     subitem (AA) is intended to  
 25                                     be or shall be construed as a

1 waiver of Tribal sovereign  
2 immunity.

3 (C) CONNECTION TO ANCHOR INSTITU-  
4 TIONS.—To the extent feasible, an eligible enti-  
5 ty that receives a middle mile grant to build  
6 middle mile infrastructure using fiber optic  
7 technology shall—

(I) 1 gigabit per second for  
downloads; and

(II) 1 gigabit per second for  
uploads to an anchor institution; and

21 (D) INTERCONNECTION AND NON-  
22 DISCRIMINATION.—

1           technology shall offer interconnection in  
2           perpetuity, where technically feasible with-  
3           out exceeding current or reasonably antici-  
4           pated capacity limitations, on reasonable  
5           rates and terms to be negotiated with re-  
6           questing parties.

7           (ii) NATURE OF INTERCONNECTION.—  
8           The interconnection required to be offered  
9           under clause (i) includes both the ability to  
10          connect to the public internet and physical  
11          interconnection for the exchange of traffic.

12          (iii) INCLUSION IN APPLICATION.—An  
13          applicant for a middle mile grant shall dis-  
14          close the applicant's proposed interconnec-  
15          tion, nondiscrimination, and network man-  
16          agement practices in the application sub-  
17          mitted through the process established  
18          under subsection (d).

19          (4) ACCOUNTABILITY.—The Assistant Sec-  
20          retary shall—

21           (A) establish sufficient transparency, ac-  
22           countability, reporting, and oversight measures  
23           for the grant program established under sub-  
24           section (c) to deter waste, fraud, and abuse of  
25           program funds; and

1                             (B) establish—

2                                 (i) buildout requirements for each eli-  
3                                 gible entity that receives a middle mile  
4                                 grant, which shall require the completion  
5                                 of a certain percentage of project miles by  
6                                 a certain date; and

7                                 (ii) penalties, which may include re-  
8                                 scission of funds, for grantees that do not  
9                                 meet requirements described in clause (i)  
10                               or the deadline under paragraph (2).

11                             (5) EXTENSIONS.—

12                             (A) IN GENERAL.—At the request of an el-  
13                                 igible entity, the Assistant Secretary may ex-  
14                                 tend the buildout deadline under paragraph (2)  
15                                 by not more than 1 year if the eligible entity  
16                                 certifies that—

17                                 (i) the eligible entity has a plan for  
18                                 use of the middle mile grant;  
19                                 (ii) the project to build out middle  
20                                 mile infrastructure is underway; or  
21                                 (iii) extenuating circumstances require  
22                                 an extension of time to allow completion of  
23                                 the project to build out middle mile infra-  
24                                 structure.

1                         (B) EFFECT ON INTERIM BUILDOUT RE-  
2                         QUIREMENTS.—If the Assistant Secretary  
3                         grants an extension under subparagraph (A),  
4                         the Assistant Secretary shall modify any build-  
5                         out requirements established under paragraph  
6                         (4)(B)(i) as necessary.

7                         (f) FEDERAL SHARE.—The amount of a middle mile  
8                         grant awarded to an eligible entity may not exceed 70 per-  
9                         cent of the total project cost.

10                         (g) SPECIAL RULES FOR TRIBAL GOVERNMENTS.—  
11                                 (1) WAIVERS; ALTERNATIVE REQUIREMENTS.—  
12                         The Assistant Secretary, in consultation with Tribal  
13                         governments and Native entities, may waive, or  
14                         specify alternative requirements for, any provision of  
15                         subsections (c) through (f) if the Assistant Secretary  
16                         finds that the waiver or alternative requirement is  
17                         necessary—

18                                 (A) for the effective delivery and adminis-  
19                         tration of middle mile grants to Tribal govern-  
20                         ments; or

21                                 (B) the construction, improvement, or ac-  
22                         quisition of middle mile infrastructure on trust  
23                         land.

24                         (2) TRIBALLY UNSERVED AREAS; TRIBALLY UN-  
25                         DERSERVED AREAS.—The Assistant Secretary, in

1 consultation with Tribal governments and Native en-  
2 tities, shall develop a process for designating Trib-  
3 ally unserved areas and Tribally underserved areas  
4 for purposes of this section.

5 (h) MAINTENANCE OF STANDARDS.—Section 602 of  
6 the Public Works and Economic Development Act of 1965  
7 (42 U.S.C. 3212) shall apply to any entity that receives  
8 assistance, whether directly or indirectly, under any pro-  
9 gram—

10 (1) that pertains to deploying broadband serv-  
11 ice; and

12 (2) for which the Assistant Secretary has ad-  
13 ministrative responsibility as provided by law or by  
14 delegation of authority pursuant to law.

15 (i) AUTHORIZATION OF APPROPRIATIONS.—There is  
16 authorized to be appropriated to carry out this section  
17 \$2,000,000,000 for fiscal years 2022 through 2026.

